IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 333 of 2015
Reserved on: 14.10.2026
Date of Decision: 28.10.2026.

State of H.P. ...Appellant

Versus

Jitender Kumar ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No.*

For the appellant/State: Mr Ajit Sharma, Deputy Advocate General.

For the Respondent : M/s R.L. Chaudhary and H.S. Sidhu, Advocates.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 29.01.2015 passed by learned Judicial Magistrate First Class, Court No. 2, Mandi, H.P. (learned Trial Court), vide which the respondent (accused before learned Trial Court) was acquitted of the commission of offences punishable under Sections 408 and 420 of the Indian Penal Code (IPC). *(The parties*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned Trial Court against the accused for the commission of offences punishable under Sections 408 and 420 of the IPC. It was asserted that the accused was appointed as a Computer Teacher by RCC Computer Academy in Government Senior Secondary School, Kothi Gehri, in September 2002. Every student used to pay a fee, which was sent to the company by the school. The accused used to take classes of the students of 9th, 10th, 10+1, and 10+2, and collect the fee from them. Clerk Hans Raj (PW-1) told the Informant Naresh Rana (PW-4) in January 2003 that the accused had collected the fee for the months of September, November and December 2002 and January 2003, but had not deposited the money in the school. The Informant made inquiries from the accused, who assured to deposit the fee. However, the accused stopped attending school with effect from 23.01.2003. The Informant sent employees to the house of the accused and also contacted him telephonically, requesting him to deposit the money. A registered letter dated 30.01.2003 was also sent, but the

accused failed to deposit the amount. The accused had collected ₹25,800/- from the students and had not deposited it with the school. Hence, the Informant made a written complaint (Ex. PW-4/A) with the police, on the basis of which FIR (Ex. PW-2/A) was registered.

3. Inspector Rajinder Singh (PW-12) investigated the matter. He seized the receipt (Ex. P-1), the applications filed by the students (Ex. P-1 to Ex. P-31), copy of the registered letter (Ex. PW-4/B), appointment order of the accused (Ex. A-1), joining report (Ex. A-2), certificate (Ex. A-3), registration certificate (Ex. A-4), certificates of the accused (Ex. A-5 to Ex. A-7), and other documents vide memo (Ex. PW-4/A). Naresh Rana produced the receipt of ₹19,952/- (Ex. P-35), attendance register (Ext.P-32), and details of misappropriated amount (Ex. P-33), which were seized vide memo (Ext. PW-3/C). ASI Joginder Pal conducted further investigation. The accused produced a pocket diary (Ext. PW-3/B), which was seized vide memo (Ext.PW-3/A). ASI Joginder Pal filed an application for obtaining specimen signatures of accused Jitender Kumar and Informant Naresh Rana. The Executive Magistrate, Laxman Das Kaundal, obtained specimen signatures and handwriting of Jitender Kumar (Ex.

PW-7/B-1 to Ex. PW-7/B-6 and Ex. PW-7/F-1 to Ex. PW-7/F-5) and informant's specimen signatures (Ext. PW-7/D-1 to Ext.PW-7/D-6). The disputed and specimen hand writings/signatures were sent to the FSL, and the report of analysis (Ex.PX) was issued. Statements of witnesses were recorded as per their version, and after completion of the investigation, the challan was presented before the Court.

4. Learned Trial Court found sufficient grounds to summon the accused. When the accused appeared, he was charged with the commission of offences punishable under Sections 408 and 420 of IPC, to which he pleaded not guilty and claimed trial.

5. The prosecution examined 15 witnesses to prove its case. Hans Raj (PW1) was posted as a clerk, who used to remit fees to the company. Suresh Kumar (PW3), HHC Raj Kumar (PW10), and Arun Kumar (PW13) witnessed the recovery. Om Prakash (PW2) signed the FIR. The informant, Naresh Rana (PW-4), was posted as Principal. Krishan Kumar (PW-5) was a lecturer in the school. Roshan Lal (PW6), Dinesh Kumar (PW8) and Roop Lal (PW15) were the students of the school. Laxman Das Kaundal

(PW7) was posted as Executive Magistrate, before whom specimen signatures/handwriting were obtained. Uttam Singh (PW9) prepared the challan. ASI Joginder Pal (PW11) and Inspector Rajender Singh (PW12) investigated the matter. Manoj Kumar (PW-14) did not support the prosecution case.

6. The accused, in his statement recorded under Section 313 Cr.P.C., admitted that he was appointed as an Information Technology Teacher in Government Senior Secondary School, Kothi Gehri, by RCC Computer Company and that he was being paid a salary by the company. He admitted that fees were charged from students and remitted to the company, and that he had collected fees from students for December 2002 and January 2003. He clarified that he had not collected the whole of the fee. He admitted that he had put specimen signatures before the Executive Magistrate. He stated that he had handed over ₹19,952/- to Hans Raj, but Hans Raj had refused to accept the amount by saying that the amount was less. So he handed over the money to the informant. He examined himself (DW-1) to prove his defence.

7. The learned Trial Court held that the matter was reported to the police on 26.07.2003 after the lapse of seven months and there was no explanation for the delay. The defence taken by the accused that he had handed over the money to the informant was highly probable in view of receipts issued by the informant. The informant also admitted his signatures on the receipt. These receipts were taken into possession from the informant. The students also did not support the prosecution case. Therefore, the learned Trial Court acquitted the accused.

8. Being aggrieved by the judgment passed by the learned Trial Court, the State has filed the present appeal asserting that the learned Trial Court erred in appreciating the evidence on record. There was no reason as to why the prosecution witnesses should be deposing falsely against the accused. Hans Raj, Clerk, specifically stated that the accused had not deposited the fee for December, 2002 and January, 2003. This statement was wrongly ignored by the learned Trial Court. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

9. I have heard Mr Ajit Sharma, learned Deputy Advocate General, for the appellant/State, and M/s R.L. Chaudhary and Mr H.S. Sidhu, learned counsel for the respondent/accused.

10. Mr Ajit Sharma, learned Deputy Advocate General for the appellant/State, submitted that the statements of prosecution witnesses corroborated each other. The accused has not disputed that he was appointed as a Computer Teacher and had collected the fee from the students. The plea that the accused had deposited the fee with the Principal was not proved on record. Hans Raj (PW1) had specifically stated that he used to collect the fee from the accused and remit it to the school. The accused had no justification for depositing the fee with the informant. The statements of prosecution witnesses proved that the accused had not deposited the money collected by him from the students. Therefore, he prayed that the appeal be allowed and the judgment passed by the learned Trial Court be set aside.

11. Mr R.L. Chaudhary, learned counsel for the respondent/accused, submitted that the Informant had admitted his signatures on receipts. The explanation that receipts were forged by the accused was not believable as no such complaint

was made by him to the police. The Investigating Officers had specifically stated that the receipts were taken from the informant, and the plea that the accused had forged the receipts was falsified by this admission. The learned Trial Court had taken a reasonable view, and this Court should not interfere with the reasonable view of the learned Trial Court while deciding an appeal against acquittal. Hence, he prayed that the present appeal be dismissed.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

13. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in ***Sanjay Kumar v. State of Bihar, 2026 SCC OnLine SC 1373,*** that the Court can interfere with a judgment of acquittal only if it is impossible, perverse, wholly unsustainable, or manifestly illegal. It was observed:

> **Scope of interference with an acquittal:**
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> **26.** At the outset, it is necessary to remind ourselves of the settled principles governing interference with an order of acquittal. An accused is presumed innocent until proven guilty. When a court of competent jurisdiction acquits the accused, the presumption of innocence is not weakened but reinforced. Where such acquittal is affirmed by the

High Court, the caution to be exercised by this Court under Article 136 is even greater.

27. In ***Kali Ram v. State of Himachal Pradesh (1973) 2 SCC 808: 1973 SCC (Cri) 1048***, this Court explained the golden thread running through criminal jurisprudence in the following words:

> *"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. A rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of* State of Punjab *v.* Jagir Singh, *a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of the interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to*

judge the evidence by the yardstick of probabilities, intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

28. The decision in ***Kali Ram*** (supra) further cautions that wrongful acquittal and wrongful conviction do not stand on the same footing, for conviction of an innocent person causes grave injustice and shakes public confidence in the administration of criminal justice. The rule of benefit of doubt, therefore, is not a technical rule; it is a substantive safeguard flowing from the presumption of innocence.

29. In ***Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60***, this Court reiterated the limited scope of interference with acquittals. This Court observed:

"75. The Trial Court has the advantage of watching the demeanour of the witnesses who have given evidence; therefore, the appellate court should be slow to interfere with the decisions of the Trial Court. An acquittal by the Trial Court should not be interfered with unless it is totally perverse or wholly unsustainable."

30. The decision in ***Ghurey Lal*** (supra) also crystallised certain propositions: first, there is a double presumption of innocence in favour of an acquitted accused; secondly, if two views are possible, the view favourable to the accused must prevail; thirdly, though the appellate court has the power to reappreciate evidence, it should interfere only when the acquittal is manifestly illegal, perverse or results in miscarriage of justice; and fourthly, due weight must be given to the Trial Court's findings, particularly because the trial judge had the advantage of observing the demeanour of witnesses.

> **31.** In ***Chandrappa v. State of Karnataka (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325***, this Court held that though the appellate court has full power to review and reappreciate the evidence, the presumption of innocence is strengthened by an order of acquittal. It was held that when two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal.
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> **32.** The same principle was restated in ***Mrinal Das v. State of Tripura (2011) 9 SCC 479***, wherein this Court held that an order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal.
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> **33.** Therefore, the question before us is not whether another view on the evidence is possible. The question is whether the view taken by the Trial Court and affirmed by the High Court is impossible, perverse, wholly unsustainable, or manifestly illegal. Having examined the record, we are unable to hold so.

14. The present appeal is to be decided as per the parameters laid down by the Hon'ble Supreme Court.

15. The police filed a charge-sheet before the learned Trial Court for the commission of offences punishable under Sections 408 and 420 IPC, which require different *mens rea* and cannot exist together. It was laid down by the Madras High Court in ***Vadivel vs. Packialakshmi, 1996 Crl. L.J. 300*** that dishonest intention is the *sine qua non* to attract cheating and voluntary

entrustment is necessary to constitute the breach of trust. Both these states of mind are mutually exclusive. It was observed: -

> "8. Thus, it is seen that for identifying the concept of criminal cheating, as provided under Section 416 of the Indian Penal Code, the ingredients of fraudulent, dishonest intention have become the basic sine qua non and if it is there or identified, then it is to be further ascertained that, as a result of which, the person so represented must be made to deliver any property to the other and that the inducement must be inherent with the intention to keep the same or to utilise the said property for the use and utilisation of the person who made such an inducement with such intention. Whereas in the concept of criminal breach of trust, as defined under Section 405 of the Indian Penal Code, voluntary entrustment following dominion over such property by one to the other person has become necessary to be identified and that the property has become necessarily disentitled, misappropriated or converted in such a way as provided by the Section. If the ingredients set out in the above sections of the law are identified, upon the materials placed by the prosecution, then Sections 406 and 420 of the Indian Penal Code, respectively, being the punishment sections, come into operation.
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> However, while doing such legal exercises, it has become imperative for the Court to see that criminal breach of trust and cheating, though generally involving dishonest intention, are mutually exclusive and different in the basic concept, in the context that criminal breach of trust is voluntary and cheating is purely on the basis of inducement with dishonest intention. In this regard, I have to say my view that both the concepts of law for the respective offences are totally distinct, different and accordingly, mutually exclusive from each other. Unless and until these are adequate materials available and made

> before the Court of law, both offences can be dealt with together."

16. A similar view was taken by the Punjab and Haryana High Court in ***Jalpa Parshad Aggarwal v. State of Haryana, 1987 SCC OnLine P&H 580*** wherein it was observed:

> "**3.** At the very outset, it may be mentioned that this Court held in ***Iqbal Singh Randhawa v. Doctor Satpaul Goyal, 1977 C.L.R. (Pb. & Har.) 134***, that an offence under section 406, Penal Code, 1860, is an antithesis of an offence under section 420, Penal Code, 1860. In a case of criminal misappropriation, the property is voluntarily kept in the custody of an accused, whereas in a case of cheating, the accused, by adopting deceitful means, induces the complainant to part with the property. Thus, an accused cannot be tried for these two offences simultaneously. Either he has committed an offence under Section 406, Penal Code, 1860 or under Section 420, Penal Code, 1860."

17. Gujarat High Court also took a similar view in ***Rajendrakumar Chakravarti v. Co-operative Bank of Baroda, 1997 SCC OnLine Guj 87: (1997) 2 GLH 394: 1998 Cri LJ 216: (1997) 4 GCD 520*** wherein it was observed:

> "A person can alternatively be charged under Sections 406 to 409 or Section 420, I.P.C. It is true that the ingredients of Sections 406 to 409 and the ingredients of Section 420 are required to be considered. The offence under Section 406, 408 or 409 and the offence under Section 420 could not go together. But if the alternative charge is framed, it could not be said that an alternative charge is illegal and invalid."

18. Rajasthan High Court also held in ***Rana Ram vs. State of Rajasthan S.B. Criminal Misc(Pet.) No. 4893/2024 decided on 06/08/2024:2024: RJ-JD:33404*** that the offences punishable under Sections 406 and 420 of IPC are antithetical. It was observed:

> "22. There is yet another aspect of the case. The offences under Section 405 IPC and Section 420 IPC are mutually antithetical and cannot stand together. In the case of Section 405 IPC, the property is delivered by the owner in trust to the accused, and there is no element of dishonesty on the part of the accused at the inception, i.e. before or at the time of entrustment of the property to him, but the element of dishonesty of the accused develops/arises subsequent to the entrustment of the property to him. As against this, for applicability of section 420, it is necessary to show that the element of dishonesty of the accused existed prior to and/or at the time of the delivery of the property to him, i.e., at the inception itself.
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> 22.1. Both Sections 405 and 420 of the IPC operate in distinctly different domains, i.e. entrustment versus inducement. Section 405 deals with entrustment, where the victim places trust in the accused by entrusting property, and any breach of this trust by the accused directly hurts the victim. In contrast, Section 420 pertains to inducement, where the accused actively approaches the victim, often through misrepresentation or deception, leading the victim to mistakenly believe in his honesty and part with their property under false pretences/inducement. Therefore, entrustment centres on a breach of existing trust, while inducement involves deceit from the outset."

19. It was laid down by the Hon'ble Supreme Court in ***Delhi Race Club (1940) Ltd. v. State of U.P., 2024 SCC OnLine SC 2248*** that the offences punishable under Section 406 and 420 of IPC are distinct and cannot stand together. It was observed:

> "**41.** Before we close this matter, we would like to say something as regards the casual approach of the courts below in cases like the one at hand. The Penal Code, 1860 (IPC) was the official Criminal Code in the Republic of India inherited from British India after independence. The IPC came into force in the subcontinent during British rule in 1862. The IPC remained in force for almost a period of 162 years until it was repealed and replaced by the Bharatiya Nyaya Sanhita ("**BNS**") in December 2023, which came into effect on 1st July 2024. It is indeed very sad to note that even after these many years, the courts have not been able to understand the fine distinction between criminal breach of trust and cheating.
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> **42.** When dealing with a private complaint, the law enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust, as the case may be, is made out from the averments made in the complaint. The magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from an FIR, this responsibility is of the police - to thoroughly ascertain whether the allegations levelled by the informant indeed fall under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for police officers to routinely and mechanically proceed to register an FIR for both the offences, i.e. criminal breach of trust and cheating, on a mere allegation of some dishonesty or fraud, without any proper application of mind.

> **43.** It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating *viz-a-viz* criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins, and they cannot survive without each other."

20. Thus, the charge-sheet could not have been filed for the commission of offences punishable under Sections 408 and 420 of the IPC.

21. The accused (DW-1) stated that he was appointed as a computer teacher by the company in the year 2002 at Kothi Gehri School. He used to impart computer education to IT students, and he had collected ₹19,952/- from the students of the school. He went to Hans Raj Clerk on 23.01.2003, but the clerk said that the money was less. He told the clerk that he was depositing the money paid by the students. The clerk advised him to talk to the Principal. He went to the Principal and handed over the money to him. The informant Principal issued the receipts (Ext. P-35 and Ext.DA). The students had deposited ₹19,952/- with him, and he had deposited this money with the Principal. He stated in his cross-examination that he was appointed by RCC Company as an information technology teacher in the year 2002. He admitted

that the fee was being paid to the company after collecting it from the students. He denied that he had taken the fee for the month of September, 2002 from the students. He denied that he had forged the receipt.

22. The statement of the accused shows that he has not disputed the collection of the fee. He claimed that he had deposited the fee with the informant after the clerk Hans Raj had refused to accept it. This plea is duly corroborated by the statement of Hans Raj (PW1), who stated that the accused Jitender had brought the fee to him, but the amount was less, so he advised him (Jitender) to talk to the Principal. Naresh Rana (PW4) admitted in his cross-examination that the receipts (Ext. DA and Ext. P-35) bear his signature. The receipt (Ext.DA) mentions that ₹19,952/- was received from the computer teacher Jitender towards the fee of December and January. Similarly, the receipt (Ex.P-35) also mentions that ₹19,952/- had been received from the computer teacher Jitendra Kumar. These two receipts corroborate the version of the accused that he had deposited the money with the informant.

23. The informant stated that the accused had misused his signatures and the seal and prepared a forged document regarding the receipt of money. It was rightly submitted on behalf of the accused that this plea cannot be accepted because it was not asserted in the complaint (Ext. PW4/A) that the accused had misused the informant's signatures and the seal of the office. The copy of the letter written to the accused (Ext. PW4/B) shows that it was a handwritten letter, whereas the receipt (Ext. DA) is computer-printed. Thus, it could not have been part of the letter written to the accused. Inspector Rajinder Singh has specifically stated that the informant Naresh Rana produced a receipt of ₹19,952/- (Ext.P-35) on 08.09.2003, along with the details of the misappropriated amount (Ext. P-33), which was seized by him vide memo (Ext. PW3/C). Learned Trial Court had rightly pointed out that the accused and not the informant would have been in possession of the forged receipt had the accused forged it. Thus, the learned Trial Court had rightly discarded the informant's statement that the receipts were forged.

24. It was submitted that the fee was being deposited with Hans Raj, Clerk, and the accused had no justification to deposit the fee with the informant. This submission will not help the

prosecution. Hans Raj specifically stated that the accused had brought the money with him, but it was less. Therefore, he advised the accused to talk to the Principal. This statement shows that the clerk had not received the money and had advised the accused to approach the Principal. Therefore, the accused cannot be faulted for approaching the principal as per the clerk's advice.

25. It was submitted that the fee of the students was ₹25,800/- and the deposit of ₹19,952/- is not sufficient. This submission cannot be accepted. The amount of ₹25,399.50 has been mentioned by the principal, and there is no proof that this money was actually paid to the accused. The students have not deposed before the Court that they had deposited ₹25,399.50 with the accused. Some of the applications placed on record mention that ₹5/- was taken as late fee. Even if all the amount mentioned in the applications is added, it is less than ₹19,952/- deposited by the accused vide receipts (Ext. P35 and Ext. DA). Therefore, the accused cannot be held liable in the absence of proof that ₹25,800/- was deposited with him and he had failed to deposit this amount with the school.

26. Therefore, the learned Trial Court had taken a reasonable view while holding that the defence taken by the accused that he had deposited the money with the principal was duly established. This Court will not interfere with the reasonable view of the learned Trial Court even if any other view is possible.

27. No other point was urged.

28. In view of the above, the present appeal fails, and it is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

29. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

30. Records be returned to the learned Trial Court forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

28th October, 2026
(Chander)